

Report to the Board of Adjustment

Prepared by the Maricopa County Planning and Development Department

Case: BA2006023

Variance

Hearing Date:

May 10, 2006 (Continued from April 12, 2006)

Agenda Item:

24

Supervisory District:

3

Applicant:

Lynn Stenquist

Property Owner:

Michael C. Rubie

Request:

Variances to permit:

- 1) An existing detached accessory structure (hay barn) to setback 0 feet from the side (south) property line where 30 feet is the minimum required,
- 2) An existing building separation distance (hay barn/horse stalls) of 0 feet where 15 feet is the minimum required,
- 3) An existing detached accessory structure (covered horse stall) to setback 0 feet from the side (south) property line where 30 feet is the minimum required,
- 4) An existing detached accessory structure (covered horse stall) to setback 0 feet from the rear (west) property line where 3 feet is the minimum required,
- 5) An existing required rear yard coverage of 42.6% where 30% is the maximum rear yard coverage allowed; and
- 6) Existing accessory lighting located 5 feet from the side (north) property line where 20 feet is the minimum required in the Rural-43 zoning district.

These variances are requested from the following Zoning Ordinance Section(s):

- 1 & 3) Section 503, Article 503.4.2
- 2) Section 503, Article 503.5.5
- 4 & 5) Section 1106, Article 1106.2
- 6) Section 501, Article 501.2.20.d

Site Location: 35844 N. 16th Street – 16th Street and Carefree Highway
(Desert Hills area)

Site Size: 98,656.8 square feet (2.26 acres)

Existing Zoning: Rural-43

Current Use: Residential

Citizen Support/Opposition: Two letters of support were submitted with these requests.
No opposition is known.

Staff Recommendation: Deny

Existing On-Site and Surrounding Zoning:

- 1. On-site: Rural-43
- North: Rural-43
- South: Rural-43
- East: Rural-43
- West: Rural-43

Existing On-Site and Surrounding Land Use:

- 2. On-site: Single-family residence
- North: Vacant
- South: Single-family residences
- East: 16th Street/vacant
- West: Single-family residence

Background:

3. **March 8, 1983:** Parcel **211-52-035A** was split to create parcels **211-52-035C**, the subject site, and **211-52-035D** via a deed recorded under docket **83-0081783**.
4. **Circa 1986:** The single-family residence was constructed.
5. **February 20, 1991:** Zoning Clearance **91-070015** was issued for a swimming pool and barrier fence.
6. **May 19, 2003:** Building permit **B200305857** was issued for a 200 amp electrical service to an existing detached shop.
7. **March 4, 2004:** The current owner took possession of the subject site via a Warranty Deed recorded under docket **2004-0224860**.
8. **December 7, 2004:** A complaint was received and violation case **V200401813** was opened by the Code Enforcement Division for construction without a zoning clearance/building permit and multiple dwelling units on site.
9. **April 28, 2005:** The owner applied for building permits **B200505696** and **B200505697** for an as-built tack room and as-built horse pens respectively.
10. **July 1, 2005:** The owner had a variance pre-application meeting with the Planning Department staff.
11. **February 23, 2006:** The applicant applied for these variance requests.
12. **April 12, 2006:** The case was continued to the May 10, 2006 hearing due to a lack of quorum.

Findings:

13. **Maricopa County Department of Transportation:** No response at the time this report was written.
14. **Flood Control District:** No response at the time this report was written.
15. **Environmental Services Department:** No response at the time this report was written.
16. **Drainage Administration:** No objection to this variance request.

Site Analysis:

17. The subject site is a rectangular shaped lot measuring 165 feet in width by 597.92 feet in depth for a total area of 98,656.8 square feet. The property fronts onto 16th Street to the east and takes access directly from 16th Street, which is a 20-foot wide improved, two lane road. The ultimate right-of-way of 16th Street is 60 feet. The property is completely enclosed by 5-foot high pipe rail fencing. The site is level and free of any topographical or physical hardships and is very orderly in appearance. Most of the natural vegetation has been removed and the site is utilized for equestrian uses. The front of the property has been landscaped around the existing single-family residence with mesquite trees, cacti and bougainvillea bushes. There is also a small cactus garden located north of the existing driveway in the front yard.



Aerial view of subject site and surrounding area

18. The site is currently developed with a 3,648 square foot single-family residence, a swimming pool and barrier fence, a 2,154 square foot tack room/shop, a 1,400 square foot hay barn, 5,270 square feet of covered stalls and a 1,270 square foot covered breezeway. There are various other equestrian related features on the site including a round walking pen, a fenced horse arena, six 20-foot high accessory lights and an above ground water storage tank. Staff could not find a building permit for the single-family residence but that does not indicate that one was never applied for since records from 20 years ago have been destroyed. Permits for the swimming pool and barrier fence were issued in 1991 and the owner currently has permits in plan review for the as-built tack room/shop and as-built covered horse stalls.
19. The following table is included to illustrate and contrast the standards for the underlying zoning district with those proposed by the applicant.

Standard	Rural-43 Zoning District	Proposed Standard
Front Yard Setback	40-feet	198-feet
Rear Yard Setback (residence)	40-feet	298-feet
Rear Yard Setback (accessory)	3-feet	0-feet
Side Yard Setback (residence)	30-feet	30-feet
Side Yard Setback (accessory)	30-feet	0-feet
Street Side Setback	20-feet	N/A
Maximum Height	30-feet/2 stories	**
Minimum Lot Area	43,560 sq. ft.	98,656.8 sq. ft.
Minimum Lot Width	145-feet	165-feet
Lot Coverage	15%	13.93%
Maximum Rear Yard Coverage	30%	42.6%
Minimum Building Separation	15-feet	0-feet
Accessory Light Setback	20-feet	5-feet

*Standards indicated in **bold** do not meet minimum base zoning standards.

** Information was not provided by the applicant.

Land Use Analysis:

20. The subject site, which is zoned Rural-43, is located in the Desert Hills area of the County near the incorporated limits of the City of Phoenix. This area is primarily residential in nature and is transitioning from sparsely settled rural homes with equestrian uses to an area of large-lot, suburban residential homes. The subject property is adjoined by a mix of single-family homes built with a wide variety of materials and building styles ranging from older ranch homes to more recent custom-built homes more commonly found in suburban neighborhoods. Development in the immediate area is the result of lot splitting and overall the area does not follow a consistent pattern of development. There is one 16-lot subdivision, Desert Hills Estates North, located in the County near the subject site. The immediate area is zoned Rural-43 (County) while the surrounding area is zoned Rural-43 and C-2 (County) and R1-35 (Phoenix).

21. Staff research indicates that eight Board of Adjustment cases have been heard within one mile of the subject site and of these eight; five were relevant to this case. Their summaries are as follow:

- Case **BA2005130** was for variance requests to permit: 1) an existing detached accessory structure (garage) to setback 15 feet from the front (east) property line where 55 feet is the minimum required; and 2) an existing detached accessory structure (garage) to setback 5 feet from the side (north) property line where 30 feet is the minimum required in the Rural-43 zoning district. These requests were approved by the Board of Adjustment with stipulations. The property is located $\frac{3}{4}$ miles southwest of the subject site.
- Case **BA2005128** was a variance request to permit an existing detached accessory structure (barn) to setback 25 feet from the side (west) property line where 30 feet is the minimum required in the Rural-43 zoning district. This request was approved by the Board of Adjustment with stipulations. The property is located $\frac{3}{4}$ miles west of the subject site.
- Case **BA2003105** was for variance requests to permit: 1) an existing detached accessory structure (storage container) to setback 6 feet from the side (north) property line where 30 feet is the minimum required; and 2) an existing building separation distance of 5 feet (shed/single-family residence) where 15 feet is the minimum required in the Rural-43 zoning district. These requests were denied by the Board of Adjustment. The property is located one mile southwest of the subject site.
- Case **BA2003102** was for variance requests to permit: 1) an existing detached accessory structure (horse shade) to setback 50 feet from the side (north) property line where 70 feet is the minimum required; and 2) an existing detached accessory structure (covered horse stalls) to setback 80 feet from the front (west) property line where 90 feet is the minimum required in the Rural-43 zoning district. These requests were approved by the Board of Adjustment with stipulations. The property is located $\frac{3}{4}$ miles northeast of the subject site.
- Case **BA2003020** was for variance requests to permit: 1) an existing single-family residence to setback 28 feet from the front (west) property line where 40 feet is the minimum required; and 2) an existing detached accessory structure (tack shed) to setback 31 feet from the front (west) property line where 40 feet is the minimum required in the Rural-43 zoning district. These requests were approved by the Board of Adjustment with stipulations. The property is located $\frac{1}{4}$ mile southwest of the subject site.

Plan Analysis:

22. The applicant originally requested two variances with this application. Staff's review of the site plan submitted by the applicant revealed four additional variances. These variance requests are as follow:

- 1) An existing detached accessory structure (hay barn) to setback 0 feet from the side (south) property line where 30 feet is the minimum required; and
- 2) An existing detached accessory structure (covered horse stall) to setback 0 feet from the side (south) property line where 30 feet is the minimum required in the Rural-43 zoning district.

These variances were added by staff:

- 3) An existing building separation distance (hay barn/horse stalls) of 0 feet where 15 feet is the minimum required,
 - 4) An existing detached accessory structure (covered horse stall) to setback 0 feet from the rear (west) property line where 3 feet is the minimum required,
 - 5) An existing required rear yard coverage of 42.6% where 30% is the maximum rear yard coverage allowed; and
 - 6) Existing accessory lighting located 5 feet from the side (north) property line where 20 feet is the minimum required in the Rural-43 zoning district.
23. The first and third requests are to allow an existing detached accessory structure (hay barn) to setback 0 feet from the side (south) property line where 30 feet is the minimum required and an existing detached accessory structure (covered horse stalls) to setback 0 feet from the side (south) property line where 30 feet is the minimum required respectively, while the fourth request is to allow an existing detached accessory structure (covered horse stall) to setback 0 feet from the rear (west) property line where 3 feet is the minimum required. These requests came about due to a code violation regarding construction without a zoning clearances/building permits. The property in question is flat and free of any notable terrain features that might restrict the location of an accessory structure. In addition, the property is over two acres in size providing adequate room to locate structures while still being within the buildable portions of the property or within the required rear yard. Staff was unable to find building permits for any of these accessory structures. The owner states that the hay barn and the southernmost covered horse stall were present when he purchased the property but that he constructed the two additional covered horse stalls along with the covered breezeway. Since these variance requests were self-created, either by the present or past owners, and alternative locations are available, staff's opinion is there are no hardships, either physical or topographical, that exist to justify the current

location and construction of the structures in question. Staff recommends that the owner find an alternative to these requests and that the Board deny these variances.

24. The second request is to allow an existing building separation distance (hay barn/horse stalls) of 0 feet where 15 feet is the minimum required. This request also came about due to the aforementioned violation case for construction without permits or clearances. Staff was unable to find any building permits or clearances for these two detached accessory structures. Once again, the property is large enough to accommodate all of these structures and still adhere to the zoning standards of the Rural-43 zoning district. As with the three previous variance requests, there are no topographical or physical hardships that would warrant the location of these structures on the site or for granting this variance. Staff recommends that the owner find an alternative to this request and that the Board deny this variance.
25. The fifth request is to allow an existing required rear yard coverage of 42.6% where 30% is the maximum rear yard coverage allowed. Section 1106, Article 1106.2 of the Maricopa County Zoning Ordinance states that, *Detached accessory buildings may be built in the required rear yard but such accessory buildings shall not occupy more than **30%** of the required rear yard and shall not be nearer than **three feet** to any side or rear lot line or setback line.* The subject site currently has approximately 2,800 square feet of structures within the required rear yard. The owner is allowed to have a maximum of 1,980 square feet of structures in the required rear yard without the need for a variance and is requesting 12.6% or 832 square feet of additional coverage over the maximum allowed. There are no hardships associated with this request except for the owner's choice of location for the covered horse stalls. With the rear yard setback provision, the lot coverage for this area is double of what the rest of the lot is allowed along with the reduction of the setbacks to 3 feet. Since there are alternatives available to the owner for this variance request, staff is recommending that the Board deny this variance.
26. The sixth request is to allow existing accessory lighting located 5 feet from the side (north) property line where 20 feet is the minimum required. There are currently six accessory lights on the subject site but three of them do not meet the required 20-foot minimum setback from an adjacent property. The three lights that are not compliant are located along the northern property line with two of them 5 feet from the property line and one 7 feet from the property line. Section 501, Article 501.2.20.d of the Maricopa County Zoning Ordinance states that permitted accessory lights...*shall not be constructed within 20 feet of any adjoining property under other ownership....* The lights are used to illuminate the round walking pens, the fenced horse arena and the rear portion of the site. This request, as with the others, is self-created since no building permits or zoning clearances were obtained. If the previous or present owner had applied for a permit for these lights they would have been told that they did not meet the required setbacks. There are no hardships associated with this request except for the owner's choice of location for the lights. Staff recommends that the owner find an alternative to this request and that the Board deny this variance.

27. Staff is sympathetic to the owner's request but is unable to find a specific hardship that would justify granting a variance. The owner states in the supplemental questionnaire that the hardship for the variances are that some of the related accessory structures on-site were present when he purchased the site and that the structures creating the violations were constructed by the prior owner. Some the structures were built by the prior owner but the current owner added at least three other structures that created the violations on the site. If the current owner would have applied for building permits for any of the new structures, he would have been informed that they were not in compliance with the Rural-43 zoning district standards for setbacks, building separation or rear yard lot coverage. The only action the owner took before building the new structures was to ask his neighbors if they had any objections to the structures. While it is true that some of the structures were built by the prior owner, that in itself provides no relief to any future owner of conducting due diligence on the property. The site in question is flat and free of any physical or topographical hardships that might restrict the location of an accessory structure. In addition, the property is well over two acres in size permitting adequate room to locate the structures while still being within the buildable portions of the property or within the required rear yard.
28. The owner's desire to not meet the standards of the zoning ordinance is not a valid hardship in granting a variance. Although the subject site is over two acres in size, the owner has almost maximized the allowable lot coverage on the site and while doing so has caused many violations of the Rural-43 zoning standards. This site is just too small for the current configuration of buildings, arena and equestrian related uses. Alternatives available to the owner are relocating and/or demolishing and rebuilding the structures within the required setbacks or yards. While these alternatives may not be what the owner wants, they are viable options considering that the structures were constructed without the benefit of zoning clearances and building permits. An alternative to the location of the lights would be to relocate them 20 feet south of the northern property line where there currently is an existing light which is 23 feet from the property line. Although two letters of support were received from the current neighbors of the property owner that does not mean that future owners of those surrounding properties will be as amiable towards these requests. Since all the requests were self-created and alternatives are available, staff is of the opinion that there are no specific hardships, physical or topographical, that exist to justify the current location of the structures in question and therefore recommends that the Board deny these variance requests.

Recommendation: (BA2006023)

29. Staff recommends **denial** of these variance requests based on the following:
- Granting these requests would confer a special privilege to the owner.
 - There is no hardship associated with these requests. Any hardship in this case is self-created due to the failure to obtain permits for the structures in question.
 - There are reasonable alternatives available to the owner that would eliminate the need for these variances.
 - These requests conflict with the intent of the Zoning Ordinance and may have a negative impact on surrounding properties.
30. If the Board finds that a reasonable use of the property cannot be made without these variances, then these requests may be approved, subject to the following stipulations:
- a) General compliance with the site plan entitled "Mike Rubie" dated February 16, 2006 and stamped received February 23, 2006.
 - b) The owner shall obtain as-built permits for all structures within 120 days of Board approval.

mjf

Attachments: Case Map BA2006023
Zoning Map
Assessor Map
Site Plan
Application
Supplemental Questionnaire (2 pages)
Photographs (3 pages)
Letter of support (2 pages)